

Assembly Bill No. 812

Passed the Assembly August 19, 2013

Chief Clerk of the Assembly

Passed the Senate August 15, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 8257, 8402, 8403, 8406.6, 8406.7, 8406.9, 8407, and 8408 of, and to add Section 8401.5 to, the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 812, Mitchell. Child care: contracts: termination and suspension.

(1) Existing law requires the State Department of Education to apply sanctions against contracting agencies that have serious licensing violations, as defined and reported by the State Department of Social Services and provide 90 days' written notification to any contractor whose agreement is being terminated, unless there is imminent danger to the health and welfare of children if agency operation is not terminated promptly.

This bill would require a 90-day written notification as specified, except in the case of certain immediate terminations.

(2) Existing law requires the department to provide an independent appeal procedure in certain instances, including, but not limited to, contract termination or suspension, to each contracting agency providing specified child care and development services.

This bill would delete the requirement that the department provide the independent appeal procedure for contract suspension. The bill would additionally require the department to provide an internal appeal procedure to resolve a dispute between the department and a contracting agency providing specified child care and development services regarding the interpretation or application of a contract term or condition, or to dispute the findings of a fiscal or programmatic review.

(3) Existing law requires the Superintendent of Public Instruction to establish a contract classification system with 3 classes of contract designations; a clear contract, a provisional contract, and a conditional contract, as specified. Existing law requires the Child Development Division of the department to provide technical assistance to agencies with conditional contracts.

This bill would revise the 3 classes of contract designations, as specified. The bill would require that technical assistance also be provided to any contracting agency making a written request to its assigned consultant or administrator within 60 days of receipt of the request.

(4) Existing law authorizes any contracting agency that evidences chronic fiscal or program violations of a felony nature, as specified, to have its contract immediately suspended or terminated provided there is documented evidence of the violations and upon review and recommendation of the general counsel of the department.

This bill would instead authorize a contracting agency that evidences any specified acts or omissions to have its contract or contracts immediately terminated provided there is documented evidence of the acts or omission and upon review and recommendation of the general counsel of the department. The bill would add additional acts or omissions, as described, that may result in immediate termination of a contracting agency's contract or contracts and require the notice of immediate termination of a contract to be served in a specified manner.

(5) Existing law authorizes a contracting agency that places a person in a position of fiscal responsibility or control who has been convicted of certain crimes to have its contract immediately suspended or terminated if there is documented evidence of the conviction and upon review and recommendation of the general counsel of the department. Existing law authorizes a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and require the contract termination to occur after notice, as specified, is provided at least 90 days before termination.

This bill would instead authorize a contracting agency that has in place or places a person in a position of fiscal responsibility or control who has been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, to have its contract immediately terminated if there is documented evidence of the conviction and upon review and recommendation of the general counsel of the department. The bill would repeal the authority of a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and the requirement that

this termination occur after notice, as specified, is provided at least 90 days before termination.

(6) Existing law authorizes local contracting agencies to continue to operate under their contract during an appeal of termination, unless the specified action is based on imminent danger to the health and welfare of children. Existing law requires, if the contract is being terminated based on imminent danger to the health and welfare of children, the reason for the termination to be specified by the department in its notice of termination.

This bill would instead authorize local contracting agencies to continue to operate under their contract during an appeal of termination, unless the action is an immediate termination action, as specified, in which case a local contracting agency would not be authorized to continue to operate under the contract after the effective date given in the notice of immediate termination.

(7) This bill would make conforming and nonsubstantive changes to these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 8257 of the Education Code is amended to read:

8257. The department shall do all of the following in administering the provisions of this chapter:

(a) Apply sanctions against contracting agencies that have serious licensing violations, as defined and reported by the State Department of Social Services pursuant to Section 1597.11 of the Health and Safety Code.

(b) Except in the case of immediate terminations taken pursuant to Sections 8406.7 or 8406.9, provide 90 days' written notification to any contractor whose agreement is being terminated. Notwithstanding Article 18 (commencing with Section 8400), the department shall establish procedures for placing a contractor whose agreement is being terminated into receivership. Action to initiate receivership shall be at the discretion of the department, and may be taken against a contractor whose agreement is being terminated either immediately or within 90 days. The receiver shall not be a department employee. The receiver shall have sufficient experience in the administration of child care and development programs to ensure compliance with the terms of the receivership.

SEC. 2. Section 8401.5 is added to the Education Code, to read:

8401.5. (a) The department shall provide an internal appeal procedure to resolve a dispute between the department and a contracting agency providing child care and development services pursuant to Section 8262 regarding the interpretation or application of a term or condition of a contract, or to dispute a finding made by the department resulting from a fiscal or programmatic review, including, but not limited to, an error rate notification.

(b) A contracting agency shall have the right to appeal the findings of a fiscal or programmatic review, including, but not limited to, an error rate finding, by submitting a request for appeal in accordance with the internal appeal procedure developed by the department pursuant to subdivision (a).

SEC. 3. Section 8402 of the Education Code is amended to read:

8402. (a) The department shall provide an independent appeal procedure to each contracting agency providing child care and development services pursuant to Section 8262 that shall be conducted by the Office of Administrative Hearings and shall be provided upon an appeal petition of the contracting agency in any of the following circumstances:

(1) Termination of a contracting agency's contract.

(2) Denial of more than 4 percent or twenty-five thousand dollars (\$25,000), whichever is less, of a local contracting agency's contracted payment for services schedule.

(3) Demand for remittance of an overpayment of more than 4 percent or twenty-five thousand dollars (\$25,000), whichever is less, of a local contracting agency's annual contract.

(b) Before filing an appeal petition for an action taken pursuant to paragraph (2) or (3) of subdivision (a), the contracting agency shall have submitted all previously required standard monthly or quarterly reporting forms to the department.

SEC. 4. Section 8403 of the Education Code is amended to read:

8403. All hearings required by Section 8402 shall be conducted according to the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except as otherwise directed in this article.

SEC. 5. Section 8406.6 of the Education Code is amended to read:

8406.6. (a) The Superintendent shall establish a contract classification system for purposes of identifying, monitoring, and providing technical assistance to contractors as follows:

(1) Clear contract. This designation shall be given to a contract that is neither a provisional contract, as described in paragraph (2), nor a conditional contract, as described in paragraph (3).

(2) Provisional contract. This designation applies to an agency's first contract for any particular service or to the contract of an existing contracting agency for a new, modified, or different type of service. The timeframe of a provisional contract is at the discretion of the department and is given to ensure that the contracting agency can demonstrate fiscal and programmatic compliance before the contract is designated as a clear contract. The contract status shall be reviewed annually.

(3) Conditional contract. This designation applies to a high-risk contract awarded to a contracting agency that evidences fiscal or programmatic noncompliance, or both fiscal and programmatic noncompliance. A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the department for all child care and development program purposes and is subject to any restrictions deemed reasonable to secure compliance. The conditional contract shall include a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of contract and to qualify the agency for clear contract status, and technical assistance plan. Failure to demonstrate substantive progress toward fiscal or program compliance within six months of that designation shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in Section 8406.7 or 8407, in accordance with Section 8402.

(b) Agencies with conditional contracts shall receive technical assistance from the Child Development Division of the department.

(c) Notwithstanding subdivision (b), technical assistance shall be provided to any contracting agency making a written request to its assigned consultant or administrator within 60 days of receipt of the request.

SEC. 6. Section 8406.7 of the Education Code is amended to read:

8406.7. (a) A contracting agency that evidences any of the following acts or omissions may have its contract or contracts immediately terminated if there is documented evidence of the acts or omissions, and upon review and recommendation of the general counsel of the department:

- (1) Fraud, or conspiracy to defraud.
- (2) Misuse or misappropriation of state or federal funds, including a violation of Section 8406.9.
- (3) Embezzlement.
- (4) Threats of bodily or other harm to a state official.
- (5) Bribery or attempted bribery of a state official.
- (6) Unsafe or unhealthy physical environment or facility.
- (7) Substantiated abuse or molestation of children.
- (8) Failure to report suspected child abuse or molestation.
- (9) Theft of supplies, equipment, or food.
- (10) Cessation of operations without the permission of the department, or acts or omissions evidencing abandonment of the contract or contracts.

(11) Failure of a program operating pursuant to Article 3 (commencing with Section 8220) or Article 15.5 (commencing with Section 8350) to fully reimburse a significant number of approved child care providers, as determined by the department, within 15 calendar days after the date set in the plan for timely payments to child care providers adopted by the contracting agency pursuant to Section 18226 of Title 5 of the California Code of Regulations, unless the failure is attributable to a delay in receiving apportionments from the state.

(12) Failure of a program operating pursuant to this chapter to pay salaries owed to employees, pay federal payroll tax, or fully reimburse a significant number of child care providers, as determined by the department, affiliated with a contracting agency pursuant to Article 8.5 (commencing with Section 8245) for more than 15 days after the employee salaries, federal payroll taxes, or reimbursement payments were due, unless the failure is attributable to a delay in receiving apportionments from the state.

(b) An agency whose contract is immediately terminated pursuant to this section retains appeal rights in accordance with Section 8402.

(c) Notwithstanding any service provision in the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of

Part 1 of Division 3 of Title 2 of the Government Code), a notice of immediate termination shall be served on the contracting agency by personal service or at the last address on file with the department, by overnight mail or certified mail. Service may be proved in the manner authorized in a civil action. Service by mail is complete at the time of deposit.

(d) The department shall advise child care and development contractors of the provisions of this section within 30 working days of the effective date of the act amending this section during the 2013–14 Regular Session of the Legislature.

SEC. 7. Section 8406.9 of the Education Code is amended to read:

8406.9. (a) An agency that has in place or places a person in a position of fiscal responsibility or control who has been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract immediately terminated pursuant to Section 8406.7 if there is documented evidence of the conviction, and upon review and recommendation of the general counsel of the department.

(b) For purposes of this section, “position of fiscal responsibility or control” includes any authority to direct or control expenditure of, or any access to, state or federal child care and development funds received pursuant to this chapter whether that authority or access is conferred based on the person’s status as an employee, director, manager, board member, or volunteer, or based on any other status.

(c) If the agency provides evidence to the department, before the effective date given in the notice of immediate termination, that the convicted person has been removed from the position of fiscal responsibility or control and provides assurance that the person will not be returned to a position of fiscal responsibility or control, the department shall withdraw the termination action.

SEC. 8. Section 8407 of the Education Code is amended to read:

8407. Except for causes listed in Sections 8406.7 and 8406.9, termination of a child care and development contract shall not occur without good cause and without notice as described in Section 8406 at least 90 days before the effective date given in the notice of termination.

SEC. 9. Section 8408 of the Education Code is amended to read:

8408. Actions as defined in subdivision (a) of Section 8402 shall remain in effect during the appeal process. However, local contracting agencies may continue to operate under the contract during an appeal of termination, unless the action is an immediate termination action taken pursuant to Section 8406.7 or 8406.9, in which case a contracting agency shall not continue to operate under the contract after the effective date given in the notice of immediate termination.

Approved _____, 2013

Governor